

89-10

2832-00012

31315

Pratt & Whitney

1 UNITED STATES
2 ENVIRONMENTAL PROTECTION AGENCY
3 REGION 9

4 In the Matter of :

5 Pratter Drum Sites

6 Mr. Joshua Pratter
7 Dr. Paul Pratter
8 Redell Industries

9 Respondents

10 Proceeding under Section 106 of the
11 Comprehensive Environmental Response,
12 Compensation and Liability Act of 1980,
as amended by the Superfund Amendments
(42 U.S.C. §9606)

Order No. 89-10

13 I. Jurisdiction
14

15 This Order is issued to Mr. Joshua Pratter, Dr. Paul Pratter
16 and Redell Industries ("Respondents") pursuant to the Comprehen-
17 sive Environmental Response, Compensation and Liability Act of
18 1980, as amended (CERCLA), 42 U.S.C. 9601 et seq., by authority
19 delegated to the Administrator of the United States Environmental
20 Protection Agency (EPA), and redelegated to the EPA Regions.
21

22 The Director of the Hazardous Waste Management Division, EPA
23 Region 9, has determined that there may be an imminent and sub-
24 stantial endangerment to the public health, welfare and the en-
25 vironment because of the release and threatened release of
26 hazardous substances from the Pratter Drum Sites (Sites) in
27 Bakersfield, California.
28

II. Findings of Fact

BACKGROUND

A. The Sites are currently separated into two locations. One location is at 3430 Getty Street, at the Jennings Transfer and Storage facility in Bakersfield, California (Jennings Transfer Site). The other is an approximately 1 1/2 acre parcel located in the Northeast corner of Meadows Field, an airport located in Kern County, California.

The Jennings Transfer facility generally acts as a furniture warehouse in a mixed commercial-residential area of Bakersfield. The facility was also used by the Respondents for the storage of approximately 270 drums of various chemical wastes, including anhydrous hydrazine, acetyl chloride, ethylene bromide, acetic anhydride, carbon tetrachloride and formic acid. These chemicals are hazardous substances pursuant to CERCLA. Upon arrival on May 3, 1989, the EPA On-Scene Coordinator (OSC) discovered 165 drums on two trailers and over 100 drums on the ground. The drums were in various conditions; eight drums had already been overpacked by the Respondent's contractors while one drum, identified at the time as containing acetyl chloride, was releasing its contents. This release was temporarily sealed by EPA and all of the drums on the site were moved away from populated areas on May 7 due to the existence of an imminent and substantial endangerment to human health. EPA and Kern County determined that the drums would be stored for further characterization at an area at the Northeast corner of Kern County Meadows Field Airport (Meadows

1 Field Site).

2 B. The Meadows Field Site has been established as an interim
3 storage facility provided by Kern County under a 0-90 day storage
4 variance authorized by the California Department of Health Serv-
5 ices (DHS).

6
7 C. Respondents have been identified and notified as the owners
8 of the drums who arranged for the storage of the drums at the
9 Jennings Transfer Site. Respondents were issued an order to
10 remove drums from the Jennings Transfer Site on May 2, 1989 by
11 Kern County. Respondents were given verbal notice of liability
12 under CERCLA by the EPA OSC on both May 2 and May 5. Respondents
13 had sent the drums for storage to the Jennings Transfer Site from
14 January 28 through February 2, 1989 for temporary storage. The
15 Respondents attempted to have them shipped to Valley Warehouse on
16 April 28, 1989 where they were rejected for reasons of poor drum
17 condition, mislabeling and releases of contents. Respondent's
18 contractors then returned the drums to the Jennings Transfer
19 Site.

20
21 D. The Jennings Transfer Site is located in a mixed commercial/
22 residential area. This facility is adjacent to one residence to
23 the north, across the street from several residences to the west
24 and less than fifty feet from the 99 Freeway to the east. The
25 closest residence houses a family with three children.

26
27 E. EPA was notified about site conditions at the Jennings
28 Transfer site on May 2, 1989 by the Kern County Environmental

1 Health office. After request by Kern County, EPA's OSC dis-
2 patched its Technical Assistance Team (TAT) on May 3rd to begin a
3 Preliminary Assessment of this site. Based on the poor condition
4 and releases from the drums at that time and the proximity of the
5 drums to residences, the OSC made a determination that an im-
6 minent and substantial hazard existed at the site and commenced
7 activities to overpack drums and transport them to the Meadows
8 Field Site for the purpose of future characterization.

9
10 F. On May 11, 1989 EPA was notified that Respondents had
11 retained a contractor, Thorne Environmental Inc., thereafter ap-
12 proved by EPA, to submit proposals to EPA for performance of
13 response actions required under this Order. Respondents have
14 contracted with Thorne Environmental Inc. to establish a trust
15 fund account and to provide certain amounts on a weekly basis
16 sufficient to fund response actions at the Sites.

17
18 III. ENDANGERMENT

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20 A. Jennings Transfer: Due to the poor condition of many of the
21 drums and releases observed by EPA and Kern County at the Jen-
22 nings Transfer Site, surface and subsurface soils at the Jennings
23 Transfer Site are likely to be contaminated by hazardous sub-
24 stances.

25
26 Meadows Field: Based on preliminary discussions with
27 Respondents, EPA has determined that the drums contain flammable,
28

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2 explosive, reactive and highly toxic chemicals. The potential
3 for further releases of these chemicals into the environment ex-
4 ists at Meadows Field.

5
6 B. The drums are suspected of containing a variety of organic
7 solvents and acids. These include:

- 8 - Anhydrous Hydrazine (highly flammable, mutagenic solvent)
- 9 - Acetyl Chloride (reactive, flammable, corrosive solvent)
- 10 - Ethylene Bromide (highly poisonous halogenated solvent)
- 11 - Acetic Anhydride (flammable, highly poisonous solvent)
- 12 - Carbon Tetrachloride (carcinogenic halogenated solvent)
- 13 - Formic Acid (highly toxic, corrosive organic acid)

14
15 In addition to the above list, there are up to one hundred dif-
16 ferent hazardous substances contained in these drums.

17
18 C. At the Jennings Transfer Site, the primary population at
19 risk from the threat of direct human contact, human inhalation
20 and/or ingestion from surface and subsurface soils are those in
21 the residences adjacent to the site. The high potential for van-
22 dalism or trespass also presents risks of direct human contact.

23
24 At the Meadows Field site, the primary population at risk
25 from the threat of fire, explosion by incompatible flammable sub-
26 stances and human inhalation is located approximately 300 yards
27 from the site in the light commercial-industrial vicinity and
28 along the heavily traveled road located 50 yards from the site.

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3 D. The EPA has designated an On-Scene-Coordinator ("OSC") for
4 the site, pursuant to 40 C.F.R. Part 300, published at 50 Fed.
5 Reg. 47912 (November 20, 1985).
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8 IV. Conclusions of Law
9

10 A. Respondents are "persons" as defined in Section 101(21)
11 of CERCLA, 42 U.S.C. §9601(21).
12

13 B. The properties located at 3430 Getty Street,
14 Bakersfield, California, and Kern County Meadows Field Airport
15 are "facilities" as defined in Section 101(9) of CERCLA, 42
16 U.S.C. §9601(9).
17

18 C. Anhydrous hydrazine, acetyl chloride, ethylene bromide,
19 acetic anhydride, carbon tetrachloride and formic acid are
20 "hazardous substances" as defined in Section 101(14) of CERCLA,
21 42 U.S.C. §9601(14).
22

23 D. The presence of hazardous substances on the site and the
24 potential for those substances to spill or leak constitutes a
25 "release" or "threatened release" of hazardous substances into
26 the environment as defined in Section 101(22) of CERCLA, 42
27 U.S.C. §9601(22).
28

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2 E. Respondents are "responsible parties" as defined in Sec-
3 tion 107(a)(3) of CERCLA, 42 U.S.C. §9607(a)(3).
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6 V. Determinations
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8 Based on the Findings of Fact and Conclusions of Law, the
9 Director, Hazardous Waste Management Division, EPA Region 9, has
10 made the following determinations:
11

12 A. The release or threatened release of hazardous sub-
13 stances and pollutants or contaminants from the sites may present
14 an imminent and substantial endangerment to the public health,
15 welfare, and the environment.
16

17 B. In order to prevent or mitigate immediate and sig-
18 nificant risk of harm to human health and the environment, it is
19 necessary that actions be taken immediately to contain and
20 prevent the release and potential release of hazardous sub-
21 stances, pollutants or contaminants from the site.
22

23 C. The removal measures required by this Order are consis-
24 tent with the National Contingency Plan, 40 Code of Federal
25 Regulations, Part 300.
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2 **VI. Work to Be Performed**

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4 Based upon the Findings of Fact, Conclusions of Law and
5 Determinations, EPA hereby Orders the Respondents to implement
6 the following measures under the direction of EPA's On-Scene
7 Coordinator.

8
9 A. Immediately upon receipt of this Order, establish Site
10 security for both the Jennings Storage Site and the Meadows
11 Field Site. This shall include fencing and/or 24 hour
12 security until EPA determines that the Sites are safe. This
13 shall be done immediately upon receipt of this Order.

14
15 B. Within 24 hours of receipt of this Order, submit to EPA and
16 implement the plan approved by EPA, and attached as Appendix
17 1 to this Order to:

- 18 a) characterize the drums at the Meadows Field Site
19 b) perform site characterization at the Jennings Transfer
20 Site.

21
22 C. Within 14 calender days of receipt of this Order, submit
23 a Workplan to EPA for EPA approval to:

- 24 a) establish soil sampling plans for both Sites
25 b) establish plans for the treatment or disposal of
26 the drums, chemicals and any contaminated soils
27 from both Sites
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2 D. Respondents shall maintain in the trust fund account, those
3 specific amounts as required under the terms of the contract
4 between Respondents and Thorne Environmental, Inc. described
5 in paragraph E of the Findings of Fact.

6 Respondents shall assure that their contractor shall main-
7 tain currently effective insurance policies as identified to
8 the EPA OSC, or their equivalent, throughout the duration of
9 performance of any response actions performed pursuant to
10 this Order.

11
12 Respondents shall commence any work under this Order only after
13 written approval of the Workplan by the EPA OSC.

14
15 All Workplans shall be in accordance with appropriate EPA
16 guidances, including the proposed National Contingency Plan 40 CFR
17 300 (December 21, 1988) and those directed for use by the OSC.

18
19 All Workplans shall include Health and Safety Plans that are con-
20 sistent with EPA Guidance, 29 C.F.R. §1910, and all comparable
21 State and local laws. All such Health and Safety Plans are to be
22 followed by all personnel in the vicinity of Site work.

23
24 All Sampling and Analysis shall be consistent with the "Removal
25 Program Quality Assurance/Quality Control Interim Guidance: Sam-
26 pling, QA/QC Plan, and Data Validation" EPA OSWER Directive
27 9360.4-01 dated February 2, 1989.

1 All Work shall be in accordance with EPA approved schedules.

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3 If EPA determines that any Workplan or any Work is not adequate
4 to address site conditions, EPA shall state so in writing to the
5 Respondents. EPA shall at that time direct the Respondents to
6 either perform the work adequately, or resubmit workplans which
7 incorporate EPA comments within a time designated by EPA. If
8 subsequent work or workplans are not to EPA's satisfaction, EPA
9 will reserve its right to take over the response actions and
10 recover costs under §107 of CERCLA (42 U.S.C. §9607).

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12 The OSC will determine the sufficiency of all response actions
13 and will determine when the response action has been completed.
14 Upon completion, Respondents shall submit a report to EPA detail-
15 ing all activities performed pursuant to this Order.

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17 VII. Compliance With Other Laws

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19 Respondents shall comply with all federal, state and local
20 laws and regulations in carrying out the terms of this Order. All
21 hazardous substances removed from the facility must be handled in
22 accordance with the Resource Conservation and Recovery Act of
23 1976, 42 U.S.C. § 6921, et seq., the regulations promulgated un-
24 der that Act, and Section 121(d)(3) of CERCLA, 42 U.S.C. Section
25 9621(d)(3).

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2 VIII. On-Scene Coordinator
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4 EPA has appointed an On-Scene Coordinator (OSC) for the Site
5 who has the authority vested in the On-Scene Coordinator by 40
6 C.F.R. Part 300, et seq. The On-Scene Coordinator for the site
7 for the purposes of this Order is:

8 Matthew B. Monsees, T-4-9
9 United States Environmental Protection Agency, Region 9
10 215 Fremont Street
11 San Francisco, California 94105
12 (415) 974-3133

13
14 IX. Submittals
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16 All submittals and notifications to EPA required by
17 this Order or any approved proposal under this Order shall be
18 made to:
19

20 Jeff Zelikson
21 Director, Hazardous Waste Management Division
22 United States Environmental Protection Agency, Region 9
23 215 Fremont Street
24 San Francisco, California 94105

25 Copies of all submittals and notifications shall be sent to
26 the On-Scene Coordinator.
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28 All approvals and decisions of EPA made regarding the sub-
mittals and modifications shall be communicated to Respondents by
the Director, Hazardous Waste Management Division or his
designee. No informal advice, guidance, suggestions, or comments
by EPA regarding reports, plans, specifications, schedules, or
any other matter will relieve Respondents of their obligation to

1 X. Access

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3 Respondents shall obtain access to the 3430 Getty Street
4 facility from the owners of that facility and/or property. Ac-
5 cess shall be for any time during site characterization, neces-
6 sary removal actions and any subsequent monitoring. Access shall
7 be for Respondents, Respondent's contractors, EPA and any other
8 person or agency that the EPA determines should have access. If
9 Respondents are unable, despite certifiable efforts to obtain ac-
10 cess to the site, Respondents shall notify EPA within ten days of
11 receipt of this Order. Nothing in this Order limits any access
12 rights that EPA or other agencies may have pursuant to law.

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14 XI. Endangerment During Implementation

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16 The EPA On-Scene Coordinator (OSC) may determine that acts
17 or circumstances (whether related to or unrelated to this Order)
18 may endanger human health, welfare or the environment and may or-
19 der the Respondents to stop further implementation of this Order
20 until the endangerment is abated.

21
22 XII. Government Not Liable

23
24 The United States Government, the State of California, Kern
25 County, and employees, agents and other representatives of each
26 governmental entity shall not be liable for any injuries or
27 damages to persons or property resulting from the acts or omis-
28 sions of Respondents, their employees or other representatives

1 caused by carrying out this Order. For the purposes of this Or-
2 der, the United States Government, the State of California and
3 the County of Kern are not, nor is any single governmental en-
4 tity, a party to any contract with the Respondents.

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8 XIII. Noncompliance

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10 A. A willful violation or failure or refusal to comply
11 with this Order may subject Respondents to a civil penalty of up
12 to \$25,000 per day in which the violation occurs or failure to
13 comply continues, pursuant to the provisions of Section 106(b)(1)
14 of CERCLA, 42 U.S.C. § 9606(b)(1). Failure to comply with this
15 Order without sufficient cause may also subject Respondents to
16 punitive damages of up to three times the total costs incurred by
17 the United States for site response pursuant to Section 107(c)(3)
18 of CERCLA, 42 U.S.C. § 9607(c)(3).

19
20 B. EPA may take over the response action at any time if
21 EPA determines that Respondents are not taking appropriate ac-
22 tion. EPA may order additional actions it deems necessary to
23 protect public health, welfare, or the environment.

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25 XIV. Opportunity to Confer

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27 Respondents may request a conference with the Director, Haz-
28 ardous Waste Management Division, EPA Region 9, who may designate

1 a member of his staff to discuss the provisions of this Order.
2 At any conference held pursuant to Respondents' request, Respon-
3 dents may appear in person or by counsel or other representatives
4 for the purpose of presenting any objections, defenses or conten-
5 tions which Respondents may have regarding this Order. If
6 Respondents desire such a conference, Respondents must make a re-
7 quest orally within 24 hours of receipt of this Order, and con-
8 firm the request in writing immediately. A conference does not
9 alter the effective date of the Order.

10
11 XV. Parties Bound

12
13 This Order shall apply to and is binding upon the Respon-
14 dents, their officers, directors, agents, employees, contractors,
15 successors, and assigns.

16
17 XVI. Notice of Intent to Comply

18
19 Within 24 hours of receipt of this Order, Respondents shall
20 orally inform EPA of their intent to comply with the terms of
21 this Order. The oral notice shall be confirmed within two days
22 of the oral notice by written notice to the Director. Failure to
23 timely notify EPA of the Respondents' intent to fully comply will
24 be construed by EPA as a refusal to comply.

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2 XVII. Notice to State
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4 Notice of the issuance of this Order has been given to the
5 State of California. EPA will consult with the California
6 Department of Health Services and other applicable California and
7 Kern County agencies, as appropriate.
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11 XVIII. Effective Date
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13 Notwithstanding any conferences requested pursuant to the
14 provisions of this Order, this Order is effective upon receipt by
15 Respondents.
16

17 IT IS SO ORDERED on this ^{16th} ~~twelfth~~ day of May, 1989.

18 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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21 by: _____
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Jeff Zelikson
Director, Hazardous Waste Management Division
EPA, Region 9
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1 Contacts:

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